



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 30, 2022

IN THE MATTER OF:

Appeal Board No. 621075

PRESENT: JUNE F. O'NEILL, MARILYN P. O'MARA, MEMBERS

In Appeal Board Nos. 621075, 621076 and 621077, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed January 14, 2022 that overruled the initial determinations disqualifying the claimant from receiving benefits, effective July 9, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with overpayments of \$9,074 in benefits recoverable pursuant to Labor Law § 597 (4), \$10,800 in Federal Pandemic Unemployment Compensation

recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$10,121 in Pandemic Emergency Unemployment Compensation recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$4,499.25 on the basis that the claimant made a willful misrepresentation to obtain benefits.

In Appeal Board Nos. 621078, 621079, 621080, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed January 14, 2022, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective July 9, 2020, on the basis that the claimant was not available for employment, as modified to be effective July 14, 2020 through September 1, 2020 and August 20, 2021 through October 14, 2021, only; charging the claimant with overpayments of \$9,074 in benefits recoverable pursuant to Labor Law § 597 (4), \$10,800 in Federal Pandemic

Unemployment Compensation (FPUC) recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$10,121 in Pandemic Emergency Unemployment Compensation (PEUC) recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), as modified to hold that the claimant was not overpaid regular benefits and referring the federal benefits for calculation consistent with the ruling on the issue of the claimant's availability for employment; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$4,499.25 on the basis that the claimant made a willful misrepresentation to obtain benefits, as modified to reduce the forfeit penalty to zero effective days and the civil penalty to \$0.

In Appeal Board No. 621081, the Commissioner of Labor appeals the decision of the Administrative Law Judge filed January 14, 2022, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective September 16, 2021, on the basis that the claimant was not capable of work, as modified to be effective September 16, 2021 through October 14, 2021.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

In Appeal Board No. 621081, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made concerning the issue of the claimant's capability of employment. The findings of fact and the opinion of the Administrative Law Judge with respect to this issue are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

However, our review of the record in Appeal Board Nos. 621075, 621076, 621077, 621078, 621079 and 621080 reveals that the cases should be remanded to hold a further hearing. Additional testimony and evidence should be taken to complete the record before the remaining issues in this matter are decided.

At the remand hearing, the parties shall be questioned about when and how the claimant requested a leave of absence from July 9, 2020 through August 29, 2020, as well as a transfer to the New Hyde Park store; whether those requests

were granted; and, if they were granted, when and by whom. They should also produce any existing documentation related to these requests. All such documentation should be provided to the Hearing Section and to the opposing party prior to the remand hearing and entered into evidence after the appropriate confrontation.

In addition, the parties shall be questioned about whether the claimant was directed to provide medical documentation for approval of the leave of absence; if she was given any instructions concerning when and how she should report to the New Hyde Park location at the end of her leave of absence; and the reason that she did not work on July 9, 2020. The claimant should also explain why she did not contact the Human Resources Department to inquire about the status of her employment when she was told after her leave ended that she was no longer in the employer's system.

The Administrative Law Judge shall confront the claimant with, and question her about, the written responses she provided in a questionnaire dated September 14, 2021. The document should then be entered into evidence.

The parties also shall be confronted with Form NYS SIDES Response, bearing a submission date of July 24, 2020, purportedly prepared by or on behalf of the employer, and questioned about its statement that the claimant's request for a leave of absence was still pending approval as no medical documentation was submitted to support the request. The document should then be entered into evidence.

The claimant is also directed to produce medical documentation establishing that her leave of absence in July and August 2020 was medically necessary. This documentation should be provided to both the Hearing Section and the employer prior to the next hearing. The Administrative Law Judge shall enter the documentation into evidence after the appropriate confrontation.

Further testimony and evidence should be taken with respect to whether the claimant was ready, willing and able to work after July 8, 2020; whether all of the benefits she received constitute recoverable overpayments; and whether the claimant made factually and willfully false statements when she certified on July 13, 2020 that her employment ended due to a lack of work and that she was ready, willing and able to work.

The parties may produce any other relevant witnesses or documents. The

Administrative Law Judge shall take any other testimony or evidence necessary to decide the issues.

DECISION: The decision of the Administrative Law Judge, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective September 16, 2021, on the basis that the claimant was not capable of work, as modified to be effective September 16, 2021 through October 14, 2021, is affirmed.

In Appeal Board No. 621081, the initial determination, holding the claimant ineligible to receive benefits, effective September 16, 2021, on the basis that the claimant was not capable of work, is modified to be effective September 16, 2021 through October 14, 2021 and, as so modified, is sustained.

The claimant is denied benefits with respect to this issue.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge in Appeal Board Nos. 621075, 621076, 621077, 621078, 621079 and 621080, are rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues of voluntary leaving of employment without good cause, availability for employment, recoverable overpayment of benefits, and willful misrepresentation, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER

MARILYN P. O'MARA, MEMBER